

Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 12 noon, on
Monday the 30th September 1918/14th Kanni 1094.

Present.

DEWAN BAHADUR M. KRISHNAN NAIR ESQ., B. A. & B. L.,
DEWAN.....*Presiding.*

V. Subba Aiyar Esq., B. A. & B. L.
N. Subrahmanya Aiyar Esq., M. A.
R. Mahadeva Aiyar Esq., B. A.
Rao Bahadur K. V. Rengaswami Aiyangar Esq., M. A.
N. Raman Pillai Esq., B. A.
John Kuriyan Esq., B. A., B. C. E.
I. C. Chacko Esq., B. A., B. Sc.
N. Raja Ram Rao Esq., B. A.
K. Parameswaran Pillai Esq., B. A. & B. L.
Paul Daniel Esq., M. A. & L. T.
A. Govinda Menon Esq., B. A.
M. Subrahmanya Pillai Esq.
K. A. Krishna Aiyangar Esq., B. A. & B. L.
R. Gopala Pillai Esq., B. A. & B. L.
John Mackie Esq.

K. Narayanan Pandalay Esq., B. A. & B. L.....*Secretary.*

The Secretary reported that Mr. John Mackie, who had been appointed Non-official Member of the Council, took his seat in Council that day.

THE CRIMINAL PROCEDURE CODE AMENDMENT BILL.

Mr. Subba Aiyar, in introducing a Bill to amend the Code of Criminal Procedure, spoke as follows :—

“SIR,

I beg to introduce a Bill to amend the Code of Criminal Procedure. The Bill has been before the public for some time, as it was published in the Gazette under Rule 32 of the Legislative Council Rules. The amending Bill consists of two Clauses. The first Clause proposes to empower the Police to search for and seize unauthorised weights and measures. After the passing of the Weights and Measures Regulation, it has been found that effective steps could not possibly be taken to enforce the use of standard weights and measures throughout the country. With that view, a provision has been included in the new Municipal Bill to the effect that, in Municipal towns, the Municipalities may take necessary action in order that false measures and weights may be seized. In the Markets Regulation that was passed last year, it is provided that the Division Peishkar may empower any officer to seize false weights and measures. Subsequently, it has been brought to the notice of the Government that in other places, where Municipalities do not exist and where the Markets Regulation does not apply, there is equal necessity for enforcing the use of standard weights and measures. Such a result cannot be attained unless there is some provision empowering the Police to seize false weights and measures, whenever they have reason to believe that in any particular place false weights and measures are used. This Clause follows Section 153 of the British Indian Code. Section 153 was in existence when our Code was passed. But that was not adopted here, evidently for the reason that, at that time, there were no standard weights and measures in Travancore and that the Weights and Measures Regulation itself was not in existence. The necessity having now arisen on account of the passing of the Weights and Measures Regulation and the principle having been accepted in the case of the Municipal Bill and in the Markets Regulation that has been passed into law, it is proposed to introduce a new Section as Section 135A in the Code of Criminal Procedure, on the lines of Section 153 of the British Indian Code.

The next Clause proposes to make the offence of criminal breach of trust and the offences under Sections 420 and 421 of the Penal Code cognisable. The amendment has become necessary for the following reasons. In the first place, Section 137 of the Code of Criminal Procedure empowers Police officers to receive information even in non-cognisable cases. The Police cannot investigate a non-cognisable case without the orders of a Magistrate. Under Section 180, the Magistrate may refer a case for investigation to the Police. This he cannot do unless he distrusts the truth of the complaint, so that Section 180 virtually nullifies the provisions of Section 137. Section 137 is only a provision directing the procedure to be adopted by the Police and not a mandate to the Magistrate. This particular circumstance has been brought to the notice of the Government in a recent case—the Kottayam Defalcation Case. Without saying anything on the merits of the case, I have to observe that the Magistrate who directed the Police to investigate the case, subsequently cancelled his order on the ground that he has no power to do so. A revision petition was presented to the High Court and this was rejected. In cases of such serious nature as the one referred to, it is not possible for the Police, as the law now stands, to investigate, to collect the necessary evidence and to place it before the Magistrate. Similarly, in the case of private individuals, where, for instance, public carriers are entrusted with the transport of goods, sometimes, the offence of breach of trust is committed, and it is not possible to move the Police in the matter in order that they may take effective steps to arrest the offenders and to seize the property embezzled. In 1912, when a Bill to amend the Code of Criminal Procedure was under consideration, an amendment was proposed at a very late stage to make the offence of breach of trust cognisable. After some discussion, it was then considered not necessary and the provision was dropped. But subsequent circumstances have shown that it is absolutely necessary that the offence of criminal breach of trust should be made a cognisable offence. Another argument I would place before the Council is that, in the case of stolen property which is defined in the Penal Code so as to include property secured by criminal breach of trust, the Police take cognisance of the offence of receiving such property, but they have no power to take cognisance of the offence of criminal breach of trust and to arrest the actual offender. If the offence is made cognisable, the Police may be moved in the matter and prompt steps may be taken to arrest the offender and to secure the property. Again, I may say that it is not always easy in the first instance to distinguish between theft and criminal breach of trust. The illustration to Section 213 of the Code of Criminal Procedure refers to this difficulty. With these words I beg to move that the principle of the Bill be affirmed”.

Mr. Krishna Aiyangar :—

“Sir,

I beg to second the motion made by my friend Mr. Subba Aiyar. After the very elaborate statement submitted by the learned Mover, I do not think it necessary that any further arguments need be advanced to support it. I may however refer to the experience we are having in our part of the country, *i. e.*, in North Travancore, where the boatmen who are entrusted with the transport of goods from Quilon to Alleppey and from Cochin to Alleppey and back, are frequently found to be charged with pilfering in respect of the goods entrusted to them. I know there have been several such cases. There was also an instance in which the Government salt that was sent by the Madura Company to Munambom formed the subject of embezzlement by the boatmen who were entrusted with the transport of the article, and it was really found impossible to take any steps so that the offenders might be caught red-handed and the thondy article seized. After all, whatever might have been the arguments that were urged against the acceptance of the measure on the previous occasion, so far as criminal breach of trust is concerned, I submit that the offences dealt with under this head are very serious, judging from the punishment which the Legislature has thought fit to impose upon persons guilty of the same. A punishment of three years' imprisonment certainly suggests that the offence is a very heinous one requiring prompt action at the earliest stage. As it is, the best evidence available would be often lost. The Police officer is not in a position to arrest the accused. He is not in a position to summon witnesses for securing evidence. He is not in a position to carry out search. These are disabilities, so to say, which the Police officer is really labouring under in the matter of dealing with offences of such a serious character. In addition to the other arguments that may be advanced, I submit that, in the interests of trade, the Police officer ought to be empowered to regard it as a cognisable offence and take the action that he is competent to take under the Criminal Procedure Code. One possible objection that might be urged is that it is something like a wanton interference with popular freedom and popular rights. I think there is not much substance in that argument. At any rate, so far as our experience of the Travancore Police goes, we have no reason to presume that there is any Police high-handedness generally in their treatment of parties appearing before them. The balance of advantage, I submit, lies in the direction of making criminal breach of trust a cognisable offence. I have nothing more to add with reference to the argument urged in regard to the other parts of the Bill. I submit that the principle of the Bill may be affirmed.”

Mr. Govinda Menon also supported the principle of the Bill.

Mr. Subba Aiyar's motion was carried.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Raman Pillai, Gopala Pillai and the Mover, to report within two months.

Seconded by Mr. Rengaswami Aiyangar.

Carried.

THE LAND IMPROVEMENT AND AGRICULTURAL LOANS BILL.

Mr. Subba Aiyar presented the report of the Select Committee on the Land Improvement and Agricultural Loans Bill, and moved that the report and the Bill be taken up for consideration at once.

Seconded by Mr. Mahadeva Aiyar.

Carried.

SECTION 4.

Mr. Govinda Menon moved that the words "the Director of Agriculture and by" be inserted between the words "loans may be granted by" and "such" in line 1, and that the words "other officers" be substituted for the word "officer" in line 2.

Seconded by Mr. Parameswaran Pillai.

Mr. Subba Aiyar, in opposing the motion, said :—

"I do not think it necessary to accept the amendment. In the first place, Section 4 says that loans may be granted by such officer as may be empowered by the Government for the purpose. Under the existing Regulation, Tahsildars and Peishkars are specially empowered to recommend or sanction up to a certain limit loans for the improvement of lands. The main principle kept in view in the Bill is that the officers who are to grant loans need not be specified, and that the officers, the limits up to which they can grant loans, and the procedure connected with them—all these may be specified by the rules that may be framed by Government in this behalf. Seeing that no specific officer is mentioned in Section 3, I submit that no officer need be mentioned in this Section also. There may be two different sets of officers under the two Sections. The procedure may be different. So also, the instalments and the mode of recovery of the loans. The Government may frame different sets of rules for these two Sections. It may be that the Director of Agriculture and his subordinates may be entrusted with the power of granting loans under this Section. But I do not think it necessary to name particularly any officer as being competent to grant loans. The matter may be safely left to the discretion of the Government. I therefore beg to oppose the amendment."

Mr. Krishna Aiyengar:—

"I would just add a few words to the observations made by Mr. Subba Aiyar. The loans contemplated under this Regulation generally fall under two heads—loans under Section 3 which are meant for substantial permanent improvements that would add to the letting value of the property, and the loans with which we are now dealing, i. e., those contemplated under Section 4 which are intended to afford temporary relief in times of distress in the matter of purchase of seed, cattle, manure, agricultural implements and other purposes not specified in Section 3. Now, it is a serious question whether, when a man stands in need of, say, a loan of ten rupees in South Travancore, in Tovala Taluk, for purchasing seed, and the Director of Agriculture may be somewhere at Parur, it would be to the greater convenience of the ryot in South Travancore to send his application to the Director who may be circuiting in North Travancore. Would it not be more convenient if it is left to the local Tahsildars who will have sufficient knowledge of ample details essential in themselves? It is much to the advantage of the agriculturist that no special officer is mentioned in the Section. I think that the Government may be trusted in the appointment of such officers. I have therefore to oppose the amendment."

Mr. Govinda Menon :—

"I do not say that Government should not empower other officers, but the Director of Agriculture being the head of a Department which is connected with agriculture, I think it is fit and proper that he should be entrusted with the power of granting loans under this Section. If the Government are prepared to assure that they will entrust him with the power of granting loans under this Section, I do not wish to press the amendment."

President :—

"No assurance of the kind could be given. In fact, the whole Bill is intended for the benefit of the agricultural population, and so, every facility will be given to them for getting loans for the purposes indicated in the Bill. The Government may authorise as many officers as may be necessary. It is not possible to give any assurance with reference to the authorisation of particular officers."

Mr. Govinda Menon :—

"Then, I cannot withdraw the amendment."

Mr. Govinda Menon's motion was put to the vote and lost.